

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

IN RE: PERSEVERANCE MARINE,  
LLC

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PERSEVERANCE MARINE, LLC,

Petitioner

Case No: 2:19-cv-534-FtM-38NPM

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**REPORT AND RECOMMENDATION<sup>1</sup>**

This matter is before the Court on the Motion for Entry of Final Default Judgment for Exoneration from Liability Against All Claimants Not Filing a Claim in This Action filed on April 3, 2020. ([Doc. 32](#)).

Petitioner Perseverance Marine, LLC is the owner of a 16' 2009 Nautica tender, hull identification number PTJ6074E909, her engines, tackle, and appurtenances ("the Vessel"). Petitioner filed this action to exonerate or limit its liability from damages related to potential injuries suffered by passengers on the Vessel. ([Doc. 1 at 1](#)).

Pursuant to Rule 4:

The court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the

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date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

Supp. Adm. R. F(4). After notice is given, all claims “shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued.” Supp. Adm. R. F(5). If a claimant seeks to contest either the right to exoneration from or the right to limitation of liability, then the claimant must file and serve an answer to the complaint unless the claim has included an answer. *Id.*

In the Order Approving Ad Interim Stipulation of Value and Directing Issuance of Monition and Injunction ([Doc. 13](#)), the Court set a date of October 14, 2019, for all persons or corporations claiming damage to file a claim and answer to the Complaint with the Clerk of Court and to serve or mail copies to the attorneys for Petitioners. ([Doc. 13 at 2](#)).

On January 15, 2020, Zani Cerny, the only identified potential claimant, filed a Notice of Settlement. ([Doc. 25](#)). On the same day, Petitioner sought a Clerk’s Default against all other potential parties. ([Doc. 24](#)). On January 31, 2020, the Court directed the Clerk of Court to enter default against all potential parties. ([Doc. 26](#)). And on the same day, the Clerk of Court entered a default “against all persons and entities that have not filed a claim or answer in this action” ([Doc. 27](#)).

Petitioner now seeks default judgment against all non-filing parties. ([Doc. 32 at 1](#)). Based upon Petitioner complying with the Supplemental Admiralty Rules as well as the

Local Rules for the Middle District of Florida, the Court finds good cause to enter a Default Judgment against all Non-Filing Parties.

Accordingly, it is **RESPECTFULLY RECOMMENDED**:

- (1) The Motion for Entry of Final Default Judgment for Exoneration from Liability Against All Claimants Not Filing a Claim in This Action ([Doc. 32](#)) be **GRANTED**.
- (2) The Clerk of Court be directed to enter a default judgement in favor of Perseverance Marine, LLC, as owner of the 16' 2009 Nautica tender, hull identification number PTJ6074E909, her engines, tackle, and appurtenances, against all Claimants who have not timely filed claims or answers in response to the Petition for Exoneration From or Limitation of Liability.

Respectfully recommended in Chambers in Fort Myers, Florida on April 23, 2020.

  
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NICHOLAS P. MIZELL  
UNITED STATES MAGISTRATE JUDGE

#### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.